



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

RAÚL R. LABRADOR

March 2, 2023

TRANSMITTED VIA CM/ECF

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

Re: *Hecox v. Little*, Case Nos. 20-35813, 20-35815

Dear Ms. Dwyer:

Plaintiff-Appellee Hecox has informed this Court that a panel of the United States Court of Appeals for the Fourth Circuit recently granted an injunction pending appeal in *B.P.J. v. West Virginia State Board of Education*, No. 23-1078, Dkt. 50 (4th Cir. Feb. 22, 2023). The one-page summary order in *B.P.J.* sheds little light on this appeal. While two members of the panel seem to have concluded that *B.P.J.* will likely succeed on appeal, their order contains no analysis explaining this conclusion. Judge Agee dissented. He also provided no written analysis.

Also, the relevant equal protection law in the Fourth Circuit, which overturned sex differentiation in bathrooms, bears little resemblance to the longstanding law in this Circuit, which has upheld sex differentiation in sports. *Compare Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F. 3d 586

(4th Cir. 2020), *with Clark ex rel. Clark v. Ariz. Interscholastic Ass’n*, 695 F.2d 1126 (9th Cir. 1982), and *Clark ex rel. Clark v. Ariz. Interscholastic Ass’n*, 886 F.2d 1191 (9th Cir. 1989). Assuming this Court adheres to its own longstanding precedent in *Clark*, its ruling will harmonize with the well-reasoned en banc Eleventh Circuit opinion in *Adams v. Sch. Bd. of St. Johns Cnty*, 57 F.4th 791 (11th Cir. 2022) (en banc).

Respectfully submitted,

/s/ Lincoln Davis Wilson

Raúl R. Labrador

Idaho Attorney General

David Dewhirst

Chief Deputy Attorney General

Lincoln Davis Wilson

Chief of Civil Litigation and

Constitutional Defense

Counsel for Defendants-Appellants